

SOUTH AFRICA / JUDGMENT

Motha v Road Accident Fund (40852/2015) [2016] ZAGPPHC 559 (23 June 2016) [2016] ZAGPPHC 559

COURT

North Gauteng High Court, Pretoria

BEFORE

C J van der Westhuizen

CASE / FILE NUMBER

40852/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO.: 40852/2015

23/6/2016

Reportable:

No

Of

interest to other judges: Yes

Revised.

SDUHLA

MARTHA

MOTHA Plaintiff

and

THE

ROAD ACCIDENT

FUND Defendant

JUDGMENT

VAN DER WESTHUIZEN, A J

1. The plaintiff is Sduhla Martha Motha, a major female, who in her personal capacity, claims damages from the defendant, the Road

Accident Fund, suffered as a result of the death of the plaintiff's daughter, Lucy Mahlangu (the deceased).

2. The deceased was a passenger in a motor vehicle that was involved in a collision with another vehicle on or about 29 July 2013. The deceased died instantly at the scene of the said collision.
3. The defendant conceded negligence and accepted liability to pay 100% of the damages proven by the plaintiff.
4. When the matter was called, there remained two issues to be decided. These related to whether the plaintiff was entitled to claim loss of support from the defendant suffered as a result of the death of the deceased and if so, the quantum thereof. The latter was to be postponed.
5. In the particulars of claim as amended, the plaintiff alleged that she is indigent.
6. The plaintiff testified on her behalf and the evidence of another daughter of the plaintiff was led. The latter's evidence is

irrelevant to the issue to be decided and no further reference to that evidence shall be made in this judgment.

7. The evidence of the plaintiff can be summarise as follows:
 - (a) The plaintiff is 59 years of age and uneducated;
 - (b) Her husband passed away 16 years ago;
 - (c) She had six children, five of whom are still alive and living with her. One is still attending school. Another daughter commenced studies at the Tshwane University of Technology, but was obliged to end her studies after the death of the deceased, who paid for her studies prior to deceased untimely death. The other three are unemployed;
 - (d) The deceased was an intelligent young lady who studied at the University of Pretoria with a full bursary and completed her course within three years. The field of study apparently related to computers;
 - (e) After graduating form university, the deceased obtained employment at the University of South Africa;

- (f) The plaintiff had no formal education or other training or skills. Prior to the said collision, the plaintiff made ends meet by doing piece jobs for her neighbours who would reward her by supplying whatever they had available such as maize, or other vegetables, or the like. She did not receive any pecuniary reward;
 - (g) The plaintiff testified that the deceased continually assured her that once the deceased is gainfully employed she would take care of the plaintiff;
 - (h) The plaintiff testified that the deceased honoured that undertaking until the day of the collision. She further testified that the deceased was obliged to do so as "she knew from where she came", indicating an obligation to support her parents in terms of customary principles;
 - (i) The deceased in fact, on obtaining employment at UNISA, supported the plaintiff and did so in the following manner:
 - (1) The deceased renovated the plaintiff's house;
 - (2) Purchased furniture for the plaintiff's home;
 - (3) Paid for electricity for the plaintiff's home;
 - (4) Gave the plaintiff an amount of R2 500.00 per month for purchasing groceries for the household;
 - (5) Paid for whatever was required at the plaintiff's household and which was necessary; and
 - (6) Generally maintained the plaintiff and the common household.
 - (j) The deceased resided with the plaintiff and the deceased's siblings at the plaintiff's home;
 - (k) Subsequent to the deceased's demise as a result of the collision, the plaintiff was destitute and sought employment. She obtained employment as a char for four to five days a week, and when she was able to work most of the days in a month, she would earn R800.00 per month, if not, her income was much less;
 - (l) She was fortunate to take up residence at one of the households where she was employed. If she did not have that opportunity, she was obliged to purchase a bus ticket to travel back and forth from her home and that would set her back R1 000.00 per month, far in excess of what she earned in a good month;
 - (m) The plaintiff testified that her youngest son, who is attending school, fetches wood from the veld and sells it to earn some money, which he gives to the plaintiff to buy necessities. This income is a mere pittance.
8. The defendant led no evidence, however was content to rely on cross-examination of the plaintiff. The stance of the defendant

during cross-examination of the plaintiff was that she had not led any evidence of her personal financial needs and only testified to the financial needs of the household collectively.

9. I am of the view that the plaintiff has proven that she was financially supported by the deceased during the deceased's working

life and would have continued to enjoy financial support from the deceased in future, had it not been for the untimely death of the deceased as a result of the said collision.

10. Mr Moukangwe, on behalf of the defendant, premised his submissions on the aforementioned stance of the defendant. He submitted that the defendant approaches a claim for loss of support resulting from a collision on the individual needs of a claimant and not on a collective basis.
11. Counsel for the defendant submitted that the plaintiff has not shown that she is indigent. It is submitted on behalf of the defendant that the plaintiff has employment and receives pecuniary reward in respect of her employment. Thus, Mr Moukangwe submits that the plaintiff has not proven any loss of support in respect of her own financial needs or that she is indigent. Accordingly, the plaintiff's claim stands to be dismissed.
12. Counsel for the plaintiff, Mr Masina, submitted that the plaintiff has indeed proven that she is indigent and that she depended upon the deceased for financial support. In this regard he referred to and relied upon two judgments supporting the plaintiff's view that an approach on a collective basis in respect of a loss of support due to a collision is good in law. In this regard he referred to the judgments in *Fosi v Road Accident Fund*[1] and *Jacobs v Road Accident Fund*. [2]
13. The issue of whether a party is indigent and whether a duty rests upon a child to maintain his or her parents was considered and discussed in the *Fosi*-matter. In that regard the court held that:
- (a) The test set in *Smith v Mutual & Federal Insurance Co Ltd*[3] was too stringent and onerous when compared to pronouncements of courts in earlier decisions;[4]
- (b) The principles enunciated in *Wigham v British Traders Insurance Co Ltd*[5] and *Oosthuizen v Stanley*[6] were to be preferred;[7]
- (c) The court, with reference to *Khan v Padayachy*, [8] accepted the principle that where another child subsequently contributes to the plaintiff's needs, such contribution does not affect the plaintiff's claim.[9]
14. The court in the *Fosi*-matter, further dealt with the African law perspective in the context of claims for loss of support where children supported and maintained their parents prior to their (the children's) death.

15. In that regard the court referred to section 211(3) of the Constitution, which provides that courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.[10]
16. Applying customary law (African law), the court found that it is incumbent upon a child to reciprocate, by supporting a parent once that child is in a position to do so.[11]
17. The court in the Fosi-matter held, that the customary law relating to the principle that a duty rests upon a child to support his or her parents when in a position to do so, should apply in determining the liability of the Road Accident Fund towards a parent who has lost a child in a motor vehicle accident, caused by the negligent driving of a motor vehicle.[12] In this regard the court further referred to the judgment in the Jacobs-matter.[13]
18. In the Jacobs-matter the court similarly dealt with the Smith, Wigham and Oosthuizen matters. In that regard the court held that the deciding principle is whether the parent can prove that he or she was dependant on the child's contribution for the necessities of life.[14]
19. The court in the Jacobs-matter held that where a child voluntarily assumes the duty to support the parent and undertakes to do so, that undertaking gave the parent, and thus the plaintiff, a reasonable expectation that such maintenance contributions would continue.[15]
20. In my view the approach by the court in the Wigham-matter that the plaintiff's status in life to what she has been accustomed to, is a factor to be considered in respect of whether the plaintiff is indigent or destitute.[16]
21. Mr Moukangwe submitted that the approach in the Fosi-matter is one of collective needs determination as opposed to individual needs determination. He further submitted that such approach is incorrect when determining the liability of the defendant in respect of loss of support. He submitted that the African law approach was inappropriate.
22. I have carefully considered the Fosi and Jacobs-judgments. I am of the opinion that those judgments correctly reflect the principles to be applied, not only where both the plaintiff and the deceased are subject to customary law, but also where in life a duty rested upon the child to support his or her parents.[17] I am in agreement with those judgments.
23. I find that the plaintiff has proven a dependency upon the deceased for financial support.
24. It follows that the plaintiff has proven that the deceased was under a legal duty to support the plaintiff at the time of the collision.

I grant the following order:

1. The deceased was under a legal duty to support the plaintiff at the time of the collision;
2. The plaintiff is liable to compensate the plaintiff the amount of damages the plaintiff is able to, prove;
3. The defendant shall pay the plaintiff's costs.

4. The issue relating to quantum is postponed sine die.

C J VAN DER WESTHUIZEN

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION

On behalf of Plaintiff:

SM Masina

Instructed by:

Marisana Mashedi Attorneys

On behalf of Defendant: E Moukangwe

Instructed by:

Tsebane Molaba Inc.

[1] 2008(3) SA 560 (C)

[2] 2010(3) SA 263 (ECP)

[3] 1998(4) SA 626 (C)

[4] At p. 564, [11]

[5] 1963(3) SA 151 (W)

[6] 1938 AD 322

[7] At p. 564, [12]

[8] 1971(3) SA 877 (W)

[9] At p. 566, [15]

[10] At p. 570, [24]

[11] At pp 567-568, [16] - [17]

[12] At p. 571, [25]

[13] *ibid.*

[14] At p. 269, [20]

[15] At pp 268 -269, [22]

[16] At 153G

[17] Cf. Oosthuizen and Wigham, *supra*

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